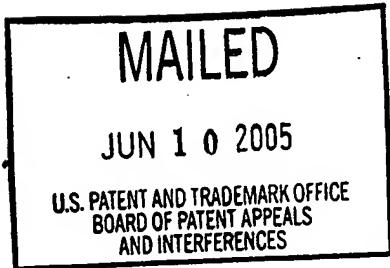


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

## UNITED STATES PATENT AND TRADEMARK OFFICE

### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte GARRY D. FRIESEN



Appeal No. 2005-1174  
Application No. 10/020,342

ON BRIEF

Before FRANKFORT, NASE, and BAHR, Administrative Patent Judges.

NASE, Administrative Patent Judge.

#### DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 10, 12 to 15, 17 to 19, 27 and 28, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

The appellant's invention relates to a trailer for transporting bulk seed boxes. A copy of the claims under appeal is set forth in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Fitch	1,675,701	July 3, 1928
Titcombe	3,868,083	Feb. 25, 1975
Grieshop	5,013,208	May 7, 1991
Kruse	5,465,829	Nov. 14, 1995
Carlson et al. (Carlson)	5,695,399	Dec. 9, 1997
Roth	6,092,974	July 25, 2000
Ehlers	6,425,725	July 30, 2002

Claims 1, 2, 27 and 28 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roth in view of Fitch.

Claims 1, 2, 8, 27 and 28 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kruse in view of Fitch.

Claims 3 and 6 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roth in view of Fitch and Ehlers.

Claims 4, 5, and 7 stand rejected under 35 U.S.C. § 103 as being unpatentable over Roth in view of Fitch, Ehlers and Titcombe.

Claim 9 stands rejected under 35 U.S.C. § 103 as being unpatentable over Roth in view of Fitch, Grieshop and Carlson.

Claims 10, 12, 13 and 18 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ehlers in view of Titcombe.

Claims 14, 15 and 17 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ehlers in view of Titcombe and Roth.

Claim 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Ehlers in view of Titcombe, Grieshop and Carlson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the final rejection (mailed December 1, 2003) and the answer (mailed November 1, 2004) for the examiner's complete reasoning in support of the rejections, and to the brief (filed July

30, 2004) and reply brief (filed December 30, 2004) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 10, 12 to 15, 17 to 19, 27 and 28 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

**Claim 1**

We will not sustain the rejections of claim 1 under 35 U.S.C. § 103.

Claim 1 reads as follows:

An improved trailer for transporting a bulk seed box, the box having first and second sidewalls, a bottom, a top, and a flange extending along the sidewalls adjacent the bottom of the box, the trailer comprising:

- a wheeled bed for supporting a bulk seed box, the bed having a perimeter edge;
- a hopper extending below the bed for receiving seed from the bulk seed box;
- a conveyor operatively connected to the hopper for unloading seed from the hopper; and
- the bed having guide plates inclining upwardly and outwardly from the perimeter edge of the bed to facilitate centering of the box on the bed.

Roth's invention relates to the field of devices for dispensing bulk materials, and more particularly to a trailer for bulk material containers. As can be seen by reference to the drawings, a trailer 10 includes a low profile bed 12 sized to receive and carry two rigid bulk seed containers 100 positioned end to end. The bed 12 is mounted on a frame that is supported by ground wheels 14. The right side of the bed 12 has a fork lift bumper guard 24 mounted over a fender 18. The top of the trailer bed 12 has two square bulk container decks 50 that are positioned end to end, and are the mirror images of each other. Each container deck 50 includes a retainer lip 52 that extends up from three sides of each deck 50 leaving the right side open to receive a bulk

container 100. Each container deck 50 also includes a central discharge opening 54 and a side discharge opening 56. A covered inspection port 58 and a hydraulically driven auger conveyor 60 are positioned between the decks 50. A flexible or telescopic tube 62 is attached to the top of the conveyor 60. A hopper 64 is located below the trailer bed 12 and is in communication with the central and side discharge openings 54 and 56 formed in each of the container decks 50. The auger conveyor 60 has a feed opening at its open lower end positioned to receive and convey material from the bottom of the hopper 64.

Kruse's invention relates to pallets used in transporting containers, and more particularly, to a pallet having a hopper and a conveyor, such as belt conveyor or auger, for unloading material in a container which is positioned on the pallet. Referring to Figure 1, a tractor 10 equipped with a three-point hitch mounted forklift 12 is positioned parallel to the back of a planter for filling planter boxes 16 with seed from a bulk container 20. The bulk seed container 20 is positioned on a pallet 30. The seed container 20 includes feet 31 forming a space 32 to accept forklift 12 so that the container 20 can be moved. Referring to Figure 2, the container 20 has a gate 36 which is held in place by cross bars 38 and which is removed by finger tabs 40 to allow the particulate material in the container 20 to flow therefrom. The pallet 30 includes a frame member 42 for receiving the container 20, a hopper 44 mounted to the frame

member 42 for receiving particulate material from the container 20 when the container gate 36 is opened, an auger 48 having a feed end 50 mounted to the hopper 44 for transporting particulate material from the hopper 44 to a discharge end 52 of the auger 48 to fill the planter boxes 16 or other desired target with the particulate material, and a drive system 56 for driving the auger 48. The frame member 42 includes a first rectangular frame section 60 of approximately the same dimensions as the length and width of the container 20, a second rectangular frame section 62 of approximately the same size and dimension as the first rectangular frame section 60 and which is connected to and spaced apart from the first rectangular frame section 60 by corner brackets 64. The first and second rectangular frame sections 60 and 62 are spaced apart a sufficient distance to allow the forklift 12 to pass through and lift the pallet 30. The corner brackets 64 extend past the first rectangular frame section 60 to engage and retain the bulk seed container 20 on the frame member 42.

Fitch's invention relates to the handling of freight by removable containers on automobile trucks. As shown in the drawings, four corner brackets are provided to position a container on the truck. Two corner brackets 20 are located just behind the cab of the truck and two corner brackets 21 are adjacent the rear end of the truck. Each of the corner brackets has a side wall 22 and an end wall 23, and a bottom or floor portion 24 which forms a supporting seat for the container. As shown, the side

walls and end walls of the brackets are inwardly beveled from their upward edges to enable a container to be readily centered as it is put into position.

After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

Based on our analysis and review of Roth and claim 1, it is our opinion that the only difference is the limitation that the bed has "guide plates inclining upwardly and outwardly from the perimeter edge of the bed to facilitate centering of the box on the bed." With regard to this difference, the examiner determined (final rejection, p. 2) that (1) "[i]t would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Roth by utilizing guide plates which inclined outwardly, as shown by Fitch, as this would make loading easier by compensating for some misalignment as the load is lowered onto the bed" and (2) "although the guide plates as modified do not have an upper edge that extends beyond the bed perimeter, it would have merely been a further design expediency to have so constructed the plates to compensate for even greater loading misalignment and/or misshapen containers." We do not agree for the reasons that follow.

Based on our analysis and review of Kruse and claim 1, it is our opinion that the differences are (1) the bed lacks "guide plates inclining upwardly and outwardly from the perimeter edge of the bed to facilitate centering of the box on the bed" and (2) the bed is not part of trailer so as to constitute a wheeled bed. With regard to these differences, the examiner determined (final rejection, p. 3) that (1) "it would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Kruse by adding wheels thereto so as to create a trailer vehicle, as this would offer greater flexibility and support" and (2) "[i]t would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Kruse by utilizing guide plates which inclined outwardly, as shown by Fitch, as this would make loading easier by compensating for some misalignment as the load is lowered onto the bed." We do not agree for the reasons that follow.

In our view, the applied art (i.e., Roth and Fitch or Kruse and Fitch) would not have made it obvious at the time the invention was made to a person having ordinary skill in the art to have modified either Roth or Kruse so as to arrive at the subject matter of claim 1. Claim 1 requires that the bed has "guide plates inclining upwardly and outwardly from the perimeter edge of the bed to facilitate centering of the box on the bed." However, this limitation is not suggested by the applied prior art. In that regard, while Fitch does teach corner brackets having inclined walls within the perimeter edge

of the bed, Fitch does not teach or suggest using guide plates inclining upwardly and outwardly from the perimeter edge of the bed to facilitate centering of a container on the bed. To supply this omission in the teachings of the applied prior art, the examiner made a determination that although the guide plates suggested by the applied prior art do not have an upper edge that extends beyond the bed perimeter, it would have merely been a further design expediency to have so constructed the plates. However, this determination has not been supported by any evidence<sup>1</sup> that would have led an artisan to arrive at the claimed invention.

In our view, the only suggestion for modifying the applied prior art in the manner proposed by the examiner to arrive at the subject matter of claim 1 stems from hindsight knowledge derived from the appellant's own disclosure. The use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is, of course, impermissible. See, for example, W. L. Gore and Assocs., Inc. v. Garlock, Inc.,

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<sup>1</sup> Evidence of a suggestion, teaching, or motivation to modify a reference may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, from the nature of the problem to be solved, see Pro-Mold & Tool Co. v. Great Lakes Plastics, Inc., 75 F.3d 1568, 1573, 37 USPQ2d 1626, 1630 (Fed. Cir. 1996), Para-Ordinance Mfg., Inc. v. SGS Importers Int'l., Inc., 73 F.3d 1085, 1088, 37 USPQ2d 1237, 1240 (Fed. Cir. 1995), cert. denied, 117 S. Ct. 80 (1996), although "the suggestion more often comes from the teachings of the pertinent references," In re Rouffet, 149 F.3d 1350, 1355, 47 USPQ2d 1453, 1456 (Fed. Cir. 1998). The range of sources available, however, does not diminish the requirement for actual evidence. A broad conclusory statement regarding the obviousness of modifying a reference, standing alone, is not "evidence." Thus, when an examiner relies on general knowledge to negate patentability, that knowledge must be articulated and placed on the record. See In re Lee, 277 F.3d 1338, 1342-45, 61 USPQ2d 1430, 1433-35 (Fed. Cir. 2002). See also In re Dembiczak, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999).

721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

For the reasons set forth above, the decision of the examiner to reject claim 1 under 35 U.S.C. § 103 is reversed.

### **Claims 2 to 9, 27 and 28**

We will not sustain the rejection of dependent claims 2 to 9, 27 and 28 for the reasons set forth above with respect to parent claim 1.<sup>2</sup>

### **Claim 10**

We will not sustain the rejection of claim 10 under 35 U.S.C. § 103.

Claim 10 reads as follows:

An improved trailer for transporting a bulk seed box, the box having first and second sidewalls, a bottom, a top, and a flange extending along the sidewalls adjacent the bottom of the box, the trailer comprising:  
a wheeled bed for supporting a bulk seed box, the bed having a perimeter edge;

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<sup>2</sup> We have also reviewed the references additionally applied in the rejection of claims 3 to 7 and 9 but find nothing therein which makes up for the deficiencies of the applied prior art discussed above with respect to claim 1.

a hopper extending below the bed for receiving seed from the bulk seed box;  
a conveyor operatively connected to the hopper for unloading seed from the hopper;  
lock bars on the bed to overlappingly engage the flange on the seed box to secure the seed box to the bed; and  
each lock bar being pivotally connected to the bed for movement between an unlocked position spaced outwardly from the perimeter edge of the bed and a locked position spaced inwardly from the perimeter edge of the bed.

Ehlers' invention relates to bulk handling apparatus more particularly the invention relates of seed containers for bulk transportation of the handlers and for the emptying of the containers into seed drills and the like. The bulk seed container handling apparatus 20 is illustrated mounted to a flat bed 21 of a truck 22. Three conventional bulk seed containers 23, 23' and 23" are detachably mounted at their bottoms 24 to the top of the handling apparatus 20 and are locked in place by L shaped flanges 25 fixed to the side frames 26 and 26', respectively, of the apparatus. The seed containers 23, 23' and 23" each have projecting shoulders 37. The L shaped flanges 25 have their horizontal flange portions 36, 36' projecting inwardly therefrom over the tops of the horizontally projecting shoulders 37 of the containers to act when the containers are mounted in the apparatus to hold the seed containers in place on the frame 20. One flange 25 on one side holds the front edge of shoulder of container 23 and the rear edge of container 23' down, while the other flange 25 on the same side holds the front edge of the shoulder of container 23' and the rear edge of container 23".

down. Similarly, the one flange 25 on the other side of the frame holds the front edge of shoulder of container 23 and the rear edge of the shoulder of container 23' down, while the other flange 25 on the same side holds the front edge of the shoulder of container 23' and the rear edge of the shoulder of container 23" down.

Ehlers' seed containers 23, 23' and 23", when full of seed, will be mounted on the elongated rectangular frame apparatus 20 when the frame is mounted on the flat bed of a truck. This is accomplished by sliding the projecting shoulders 37 of the containers beneath the horizontal flange portions 36, 36' of the spaced L shaped flanges 25. The front shoulder of the front container 23" when fully on the frame 20 will have slide beneath the horizontal flange portion 35" of a front L shaped flange 25' at the front plate of the frame apparatus as shown in Figure 2. Once the containers have been fully mounted onto the frame 20 a z shaped locking plate 40 will have its vertical flange end portion 39 ' slide down in front of a rear end plate 33 and so that its horizontal portion 38' will rest on the top of the rear shoulder 37 of the rear container 23 and it offset top vertical flange end portion 40 resting against the rear upright wall of the rear container 23. Whereupon, a steel rod 41 will be slide through, eyelets 42 in of the tops of rear diagonal flanges 43 sliding across the horizontal portion 38' of the locking plate 40 and across the top of the rear shoulder 37 of the rear seed container 23, to

thereby lock the rear container 23 to the rear of the frame and thereby lock all three of the containers on the frame or apparatus 20, while on the flat bed of the truck.

Ehlers' containers will be transported on the truck to which the frame apparatus 20 is mounted, along roads to fields where seed drills may be located, with the seed containers locked on the frame and the frame locked the flat bed of the truck. The truck will be driven to a location in the field near where the seed drill may be located. A conventional augering apparatus 45, shown in phantom lines in Figures 1 and 3 of a conventional construction will be mounted to the rear end plate 33 of the frame apparatus after the seed containers are mounted on the frame apparatus with the frame apparatus mounted on the truck. Once the truck has reached the seed drill or drills needing seed, the conventional emptying plates 42 at the bottom of each seed container 23,23' and 23" will be slid laterally outward from the containers, which opens the bottoms of the seed containers and allows the seed in the containers to empty or gravitate down into a U shaped channel 31 of the frame apparatus. The flat bed 21 of the truck will then be tilted or pivoted rearward at an angle of approximately 20 degrees, as shown in phantom lines 43' in Figure 1, and the emptying plates of the three containers having been removed laterally from the sides of the containers to open the bottoms of the containers the grain will now flow or gravitate down from the bottoms of the containers into the channel 31 of the frame apparatus 20 and slide rearward along

the U channel 31 to the rear end plate 33. The slidable end gate 34 in the rear end plate of the frame apparatus will be slid upward on the rear end plate to open the opening 35 in the rear end plate 33 at the rear of the apparatus so that seed or grain may flow from the containers by gravity into the channel and along the channel and out the rear opening in the rear plate at the rear of the apparatus. From there the seed may flow by gravity out the opening into the augering device mounted to the rear of the apparatus. Whereupon, the auger may be pivoted to place its upper end at least near and above the seed containers of the seed drill and the flexible chute mounted to the top of the auger will be placed in the top opening in the seed container of the seed drill and the auger will be then powered to rotate the auger to auger the grain received in the receptacle surrounding the bottom of the auger from the opening in the rear plate of the frame apparatus upward into along the auger to the top of the auger where it will gravitate downward along the flexible chute of the auger into the seed containers of the seed drill for replenishing the seed in the seed drill.

Titcombe's invention relates to container holding beds which are mounted on a chassis and which in combination with the chassis constitute a trailer that can be drawn by the motorized vehicle. As shown in Figure 1, a trailer bed 10 has a series of rollers 12 which permit a full and thus heavy container to be slid or rolled onto the bed 10 in a longitudinal direction. Along the center strip of the bed there are four fastening devices

14. These fasteners 14 operate in pairs. An inner pair functions to fasten down a smaller size container while the outer pair functions to fasten down a larger size container. A container 16 (see Figures 5 and 6) having an outwardly extending flange-like lip 18 along the base rim of the container 16 will fit between two of these fasteners 14. The outer edge of the lip 18 will abut against the shoulder 22 of the fastener 14 and thus two of these fasteners 14 will hold the container 16 from longitudinal movement on the bed 10. In addition, a tongue 24 extending out from an opening in the shoulder 22 closely overlies the top surface 26 of the lip 18 to prevent the container 16 from bouncing up from the bed 10 as the chassis 27 to which the bed 10 is attached is pulled over rough terrain. Thus the container 16 is kept from rolling off the bed 10 and from bouncing up on the bed 10 in response to the jogging or bumping in the field over which the chassis 27 is drawn.

Based on our analysis and review of Ehlers and claim 10, it is our opinion that the differences are (1) each lock bar being "pivotally connected to the bed for movement between an unlocked position spaced outwardly from the perimeter edge of the bed and a locked position spaced inwardly from the perimeter edge of the bed" and (2) the bed is not part of trailer so as to constitute a wheeled bed. With regard to these differences, the examiner determined (final rejection, p. 4) that (1) "it would have been

obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers by disposing the seed handling equipment on a wheeled trailer to be towed behind the truck, as this would enable the truck to be used for other work when not being used for seed handling" and (2) "[i]t would have been obvious for one of ordinary skill in the art at the time of the invention to have modified the apparatus of Ehlers by pivotally mounting the lock bars for movement between locking and unlocking positions, as shown by Titcombe, as this would accord a more convenient means of securing the boxes on the vehicle." We do not agree.

In our view, the applied art would not have made it obvious at the time the invention was made to a person having ordinary skill in the art to have modified Ehlers so as to arrive at the subject matter of claim 10. Claim 10 requires that each lock bar be "pivotally connected to the bed for movement between an unlocked position spaced outwardly from the perimeter edge of the bed and a locked position spaced inwardly from the perimeter edge of the bed." However, this limitation is not suggested by the applied prior art. In that regard, while Titcombe does teach pivoting tongues within the perimeter edge of the bed, Titcombe does not teach or suggest using pivoting lock bars connected to the bed for movement between an unlocked position spaced outwardly from the perimeter edge of the bed and a locked position spaced inwardly from the perimeter edge of the bed. To supply this omission in the teachings of the applied prior

art, the examiner made a determination (final rejection, pp. 4-5) that the pivoting lock bars of Titcombe, when added to the Ehlers apparatus, would necessarily be placed at the bed perimeter and the unlocked position would logically then be outside this perimeter; otherwise, loading would be difficult if not impossible. However, this determination has not been supported by any evidence that would have led an artisan to arrive at the claimed invention. In that regard, we note that if the pivoting lock bars of Titcombe where to be added to the Ehlers apparatus they would necessarily be placed beyond the perimeter of the containers but not necessarily be placed so that the unlocked position would be spaced outside the perimeter edge of the bed.

In any event, we fail to see any suggestion or motivation in the teachings of the applied prior art to make Ehlers' lock bars pivotable as claimed. At best, Titcombe would have suggested making Ehlers' locking plate 40 pivotable, however, this does not result in the claimed subject matter. In our view, the only suggestion for modifying Ehlers to arrive at the subject matter of claim 10 stems from hindsight knowledge derived from the appellant's own disclosure. As stated above, the use of such hindsight knowledge to support an obviousness rejection under 35 U.S.C. § 103 is impermissible.

For the reasons set forth above, the decision of the examiner to reject claim 10 under 35 U.S.C. § 103 is reversed.

**Claims 12 to 15 and 17 to 19**

We will not sustain the rejection of dependent claims 12 to 15 and 17 to 19 for the reasons set forth above with respect to parent claim 10.<sup>3</sup>

**CONCLUSION**

To summarize, the decision of the examiner to reject claims 1 to 10, 12 to 15, 17 to 19, 27 and 28 under 35 U.S.C. § 103 is reversed.

REVERSED

  
CHARLES E. FRANKFORT  
Administrative Patent Judge

  
JEFFREY V. NASE  
Administrative Patent Judge

  
JENNIFER D. BAHR  
Administrative Patent Judge

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BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

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<sup>3</sup> We have also reviewed the references additionally applied in the rejection of claims 14, 15, 17 and 19 but find nothing therein which makes up for the deficiencies of the applied prior art discussed above with respect to claim 10.

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Application No. 10/020,342

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MCKEE, VOORHEES & SEASE, P.L.C.  
801 GRAND AVENUE  
SUITE 3200  
DES MOINES, IA 50309-2721

JVN/jg